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C O N F I D E N T I A L SECTION 01 OF 03 ZAGREB 000635

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STATE FOR S/WCI RAPP AND EUR/SCE

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TAGS: [PREL](#) [PGOV](#) [KAWC](#) [HR](#)

SUBJECT: WAR CRIMES AMBASSADOR RAPP DISCUSSES ICTY
COOPERATION, NEW GOTOVINA INVESTIGATION WITH CROATIAN AND
EU OFFICIALS

REF: ZAGREB 602

Classified By: Political Officer Chris Zimmer for Reasons 1.4 (b) and (d).

11. (C) SUMMARY: S/WCI Ambassador Stephen Rapp met separately with top Croatian justice officials and EU ambassadors to discuss Croatia's latest investigation into the missing Gotovina documents (reftel) and related efforts to unblock the Judiciary Chapter in the EU accession process. He noted that ICTY Prosecutor Brammertz may be difficult to satisfy even with a credible investigation, unless that investigation turns up more of the sought-after documents. Amb. Rapp said that, once the investigation was complete, and if it was a credible one, he could privately share his assessment of the new investigation with Brammertz or conversely suggest improvements to the Croatians. He also met with ICTY, OSCE, and NGO representatives to obtain their generally positive assessments of Croatia's efforts to resolve war crimes cases both domestically and within the region. END SUMMARY.

12. (U) During Ambassador Rapp's visit to Croatia from October 11-13, 2009, he met with Minister of Justice, Ivan Simonovic; Chief State Prosecutor, Mladen Bajic; Interior Minister Tomislav Karamarko; OSCE Head of Office Enrique Horcajada; Thomas Osorio, Head of Zagreb Office, International Criminal Tribunal for the Former Yugoslavia (ICTY); Vesna Terselic, Director, Dokumenta NGO; and a group of European Union ambassadors.

Justice Minister on ICTY Cooperation

13. (C) Justice Minister Simonovic gave Ambassadors Rapp and Foley an update on Croatia's cooperation with ICTY, and the new steps Croatia is taking to address shortcomings in previous investigations of missing documents. Ambassador Rapp said he doubts the Trial Chamber will rule on Croatia's compliance with the Chamber's September 18, 2008 order to turn over documents or provide results of an investigation into their whereabouts. Rapp acknowledged, in response to a question from Simonovic, that ICTY Prosecutor Brammertz may never be satisfied with the investigation unless it turns up the documents. He said that the new investigation will need to detail what happened to each of the 23 documents the Croatians and ICTY both identified in a February 2009 meeting as having existed at some point. He also told Simonovic that Brammertz was familiar with past Croatian intelligence efforts to interfere with ICTY's work, divulged to Rapp earlier in the day by Thomas Osorio from ICTY, but that Brammertz has never accused Simonovic or the current administration of acting in bad faith.

¶4. (C) Simonovic said he wants to work with Brammertz's experts on the new investigation to avoid having Brammertz suddenly express dissatisfaction with Croatia's new efforts shortly before he reports to the Security Council in November or early December. Simonovic added that he is looking to Brammertz to give concrete suggestions on how to improve this effort compared to earlier searches and that he is "afraid of abstract dissatisfaction" coming from Brammertz. Foley noted that if evidence arises during the new process, the investigators should follow up to determine what information was in a document and ask why it was destroyed, rather than just listing that it was destroyed.

¶5. (C) Simonovic said that Croatia has requested the ICTY Trial Chamber to allow investigators to directly question Gotovina and that he wanted to deliver a message to Gotovina, bypassing his defense team, whom he implied may be continuing to hide documents. He wants to tell Gotovina that these documents are threatening the future of the nation and that if he is a true patriot, he should find a way to turn them over. Rapp responded that he doubted the defense team would ever allow their client to be questioned by investigators.

Rapp Offers To Give Brammertz a Private Assessment

¶6. (C) Ambassador Rapp promised Simonovic that he will personally meet with or call Brammertz to discuss the new Croatian investigation and give him his personal assessment. The aim would be to close any gap in assessments, or determine where, if appropriate, the Croatians needed to improve. He asked that Simonovic be completely open with him

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and post about the investigation in order to facilitate this discussion with Brammertz.

¶7. (C) Simonovic also raised the issue of the Karadzic defense team's document request. An extension was granted to Croatia until October 30, but they were requesting the defense to provide more specifics on the documents covered by the request. Simonovic and Rapp agreed that this appears to be a fishing expedition by Karadzic. Simonovic acknowledged that there are grounds to believe that some relevant documents do exist because they may have been posted online by a former general.

State Prosecutor on ICTY and Domestic and Regional Efforts

¶8. (U) On October 13, Chief State Prosecutor Bajic detailed Croatia's efforts to build regional cooperation on war crimes prosecutions and his efforts to bring criminal charges in the Gotovina documents case. Bajic thanked S/WCI and the Embassy for efforts to support regional cooperation and credited both with helping to develop agreements between Croatia, Serbia, and Montenegro that allow direct contact between prosecutors and evidence transfer in war crimes and organized crime cases. He also noted that Croatia now has four prosecutors at its ICTY liaison office in The Hague.

¶9. (C) On ICTY cooperation, Bajic said that Croatia has no reason to hide documents after helping to arrest Gotovina and with so much at stake in terms of EU accession. He added, however, that he understands Brammertz's position and said that, as a prosecutor, he would also hold out on a positive assessment until he received the documents.

¶10. (C) On domestic prosecution of war crimes, Rapp stressed the need to prioritize the remaining cases and focus efforts on the most important, which was the focus of his meeting with the OSCE the day before. Bajic said that his office set cases involving high-ranking officials of the Croatian Army or police units as a top priority. He said that his office is personally taking on the highest priority cases to try to create a climate where it will be easier for lower-level

prosecutors to then prosecute lower-level Croatian officials.

He noted that this all became possible when the 11-bis Ademi-Norac case, transferred from ICTY, introduced the concept of command responsibility to the Croatian judiciary. Prior to this, prosecutors would only target direct perpetrators of war crimes.

¶11. (C) Following the Bajic meeting, Ambassador Rapp had a brief meeting with Interior Minister Karamarko, who arrived at Bajic's office together with top police officials to plan Croatia's new investigation into the missing documents. Bajic said they were also going to discuss an upcoming arrest of seven individuals, including a brigadier general, for executing POWs in Croatia and Bosnia. Karamarko and Bajic both welcomed Rapp's information that he would personally speak to Brammertz about Croatia's new investigation.

EU Ambassadors Split on Croatia's Cooperation

¶12. (C) In a lunch with several EU ambassadors, Ambassador Rapp shared his offer to meet with Brammertz and review Croatia's new investigation. The EU ambassadors expressed widely varying assessments of Croatia's ICTY cooperation, and even more divergence on how to move forward with EU accession negotiations. The Hungarian ambassador raised doubts about whether the EU should outsource its judgment on Croatia's ICTY cooperation to the prosecutor, while the Dutch and Belgian ambassadors insisted the EU had to follow Brammertz's judgment. The Czech ambassador was critical of Croatia's cooperation to date, while the Italian, Hungarian, and Swedish argued that cooperation with ICTY was very important, but could be included as a closing benchmark for the Judiciary Chapter, rather than delaying the opening of that chapter. Ambassadors welcomed Ambassador Rapp's offer to informally assist in connection with Brammertz's next assessment of the GoC's cooperation.

Croatia Making Progress

¶13. (SBU) In other meetings with OSCE, ICTY, and the NGO Documenta, Ambassador Rapp heard a generally positive

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assessment of Croatia's efforts on domestic prosecution of war crimes and regional cooperation. The OSCE said that Croatia is progressing on efforts to correct past mistakes in war crimes prosecutions and commended the State Prosecutor's work in addressing in absentia convictions and moving forward with regional cooperation. According to the OSCE, the focus now needs to be on prioritizing the remaining case load, supporting the use of specialized war crimes courts, and investigating or prosecuting the true perpetrators when in absentia convictions are overturned or Croats are acquitted. Documenta's Terselic mentioned that Croatia has made significant progress, but a review of amnesty decisions and the fulfillment of records requests were too slow.

¶14. (C) Thomas Osorio, ICTY's representative in Zagreb, said that the relationship with Bajic is the best ICTY has with any prosecutor. On the documents issue, he said that Croatia should focus on improving its investigation and ease off on the diplomatic push. He said that most of the current leadership at the MOJ came from the Ministry of Foreign Affairs and they do not have strong judicial backgrounds or know how to conduct effective investigations. He described past efforts of Croatian intelligence agencies to disrupt ICTY's work, which ICTY learned about when new leadership was brought into the Croatian organizations and then worked closely with ICTY prosecutor Carla del Ponte on the arrest of Gotovina. Finally, Osorio showed Amb. Rapp the February list of 23 key documents still being sought. He claims that for each item on the list, Croats at the February meeting said they either saw the document or took part in its creation, so the prosecutor knows they existed at some point.

¶15. (C/NF) COMMENT: The informal offer by Ambassador Rapp to compare assessments with Brammertz of the latest Croatian investigation could prove highly beneficial. The onus will be on the Croats to conduct a credible and thorough investigation into the still missing documents. If they meet that test, closing the assessment gap will be critical to our goal of accelerating Croatia's EU accession, notably in the area of the judicial reform process that needs to get started.

¶16. (U) Ambassador Rapp has cleared on this message.
FOLEY